

Introduced by Senator Lowenthal
(Principal coauthor: Senator DeSaulnier)
(Principal coauthor: Assembly Member Torres)
(Coauthors: Assembly Members Atkins and Norby)

February 16, 2011

An act to amend Sections 33080.1, 33080.2, 33080.8, 33334.2, 33334.3, 33334.4, 33334.12, 33334.16, 33413, and 33413.5 of, to add Sections 33080.9, 33080.10, 33080.11, 33080.12, and 50464.5 to, and to add Article 13 (commencing with Section 33460) to Chapter 4 of Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

SB 450, as introduced, Lowenthal. Redevelopment.

(1) The Community Redevelopment Law requires that each redevelopment agency submit the final report of any audit undertaken by any other local, state, or federal government entity to its legislative body and to additionally present an annual report to the legislative body containing specified information.

This bill would require the agency to include additional information relating to any major audit violations, as defined, any corrections to those violations, and planning and general administrative expenses of the Low and Moderate Income Housing Fund. The bill would authorize the Controller to conduct quality control reviews of independent financial audit reports and require the Controller to the results of his or her reviews. The Controller would be required to comply with certain notification and referral provisions in the event that the audit was conducted in a manner that may constitute unprofessional conduct.

The bill would require the Department of Housing and Community Development to conduct audits of redevelopment agencies to ensure compliance with the housing provisions of the Community Redevelopment Law. The bill would require each agency to annually deposit 0.05% of any tax increment deposited into the Low and Moderate Income Housing Fund into the Redevelopment Agency Accountability Fund, which the bill would create, to fund the department audits.

(2) Existing law requires that funds used for purposes of increasing, improving, and preserving a community's supply of low- and moderate-income housing be held in a separate Low and Moderate Income Housing Fund until used. Existing law limits the planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund.

The bill would revise the costs and expenses which may be considered planning and general administrative costs for the purposes of being paid from the Low and Moderate Income Housing Fund. Except as provided, the bill would prohibit an agency from expending more than 15% of the tax increment deposited in the fund for planning and general administrative costs. The bill would impose other reporting and accountability measures on agencies with respect to the use of moneys in the fund for planning and administrative purposes.

(3) Existing law requires, except as specified, each agency to expend over each 10-year period of the implementation plan, the moneys in the Low and Moderate Income Fund to assist housing for persons of moderate, low, and very low income according to specified calculations.

The bill would instead require that at least 70% of the agency's expenditures from the fund directly assist the new construction, acquisition, and substantial rehabilitation or preservation of rental housing for persons of extremely low, very low, low, or moderate income, 20% of which is required to be directed towards rental housing for persons of extremely low-income.

(4) Existing law requires an agency that has failed to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within one year to disburse the surplus voluntarily to the appropriate county housing authority or another public agency or to expend or encumber the surplus within two additional years.

The bill would delete these provisions. The bill would modify the definition of the term "excess surplus."

(5) Whenever low- or moderate-income housing dwelling units are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment that is subject to a written agreement with the agency, or where financial assistance has been provided by the agency, the agency is required to provide replacement housing within 4 years of the destruction or removal.

The bill would modify the agency’s obligation to provide replacement housing to low- or moderate-income persons and families and would impose new requirements on the agency with respect to the replacement housing plan and housing specifications. If a court has found that an agency has failed to comply with these provisions, the bill would require the court, at a minimum, to issue an order temporarily prohibiting the agency from issuing any debt for any project area, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 33080.1 of the Health and Safety Code
2 is amended to read:

3 33080.1. Every redevelopment agency shall submit the final
4 report of any audit undertaken by any other local, state, or federal
5 government entity to its legislative body within 30 days of receipt
6 of that audit report. In addition, every redevelopment agency shall
7 present an annual report to its legislative body within six months
8 of the end of the agency’s fiscal year. The annual report shall
9 contain all of the following:

10 (a) (1) An independent financial audit report for the previous
11 fiscal year. “Audit report” means an examination of, and opinion
12 on, the financial statements of the agency which present the results
13 of the operations and financial position of the agency, including
14 all financial activities with moneys required to be held in a separate
15 Low and Moderate Income Housing Fund pursuant to Section
16 33334.3. This audit shall be conducted by a certified public
17 accountant or public accountant, licensed by the State of California,
18 in accordance with Government Auditing Standards adopted by
19 the Comptroller General of the United States. The audit report
20 shall meet, at a minimum, the audit guidelines prescribed by the
21 Controller’s office pursuant to Section 33080.3 and also include
22 a report on the agency’s compliance with laws, regulations, and

1 administrative requirements governing activities of the agency,
 2 and a calculation of the excess surplus in the Low and Moderate
 3 Income Housing Fund as defined in subdivision (g) of Section
 4 33334.12. *The audit report shall include a statement from the*
 5 *auditor as to whether or not the agency has any major audit*
 6 *violations, as defined in subdivision (j) of Section 33080.8.*

7 (2) *A statement describing any activities taken in that fiscal*
 8 *year to correct major audit violations identified during or prior*
 9 *to that fiscal year by the agency, its auditor, or the Department of*
 10 *Housing and Community Development.*

11 ~~(2)~~
 12 (3) However, the legislative body may elect to omit from
 13 inclusion in the audit report any distinct activity of the agency that
 14 is funded exclusively by the federal government and that is subject
 15 to audit by the federal government.

16 (b) A fiscal statement for the previous fiscal year that contains
 17 the information required pursuant to Section 33080.5.

18 (c) A description of the agency’s activities in the previous fiscal
 19 year affecting housing and displacement that contains the
 20 information required by Sections 33080.4 and 33080.7.

21 (d) A description of the agency’s progress, including specific
 22 actions and expenditures, in alleviating blight in the previous fiscal
 23 year.

24 (e) A list of, and status report on, all loans made by the
 25 redevelopment agency that are fifty thousand dollars (\$50,000) or
 26 more, that in the previous fiscal year were in default, or not in
 27 compliance with the terms of the loan approved by the
 28 redevelopment agency.

29 (f) A description of the total number and nature of the properties
 30 that the agency owns and those properties the agency has acquired
 31 in the previous fiscal year.

32 (g) A list of the fiscal years that the agency expects each of the
 33 following time limits to expire:

34 (1) The time limit for the commencement for eminent domain
 35 proceedings to acquire property within the project area.

36 (2) The time limit for the establishment of loans, advances, and
 37 indebtedness to finance the redevelopment project.

38 (3) The time limit for the effectiveness of the redevelopment
 39 plan.

1 (4) The time limit to repay indebtedness with the proceeds of
2 property taxes.

3 (h) *Consistent with paragraph (1) of subdivision (d) of Section*
4 *33334.3, a statement of the amount and percentage of tax increment*
5 *expended from the Low and Moderate Income Housing Fund for*
6 *planning and general administration in each of the preceding five*
7 *fiscal years.*

8 (i) *A list of all real properties owned by the agency, the date of*
9 *acquisition for each property, the agency's intended purpose for*
10 *each property, and a statement of the amount, if any, of moneys*
11 *from the Low and Moderate Income Housing Fund used to acquire*
12 *the property.*

13 ~~(h)~~

14 (j) Any other information that the agency believes useful to
15 explain its programs, including, but not limited to, the number of
16 jobs created and lost in the previous fiscal year as a result of its
17 activities.

18 SEC. 2. Section 33080.2 of the Health and Safety Code is
19 amended to read:

20 33080.2. (a) When the agency presents the annual report to
21 the legislative body pursuant to Section 33080.1, the agency shall
22 inform the legislative body of any major audit violations of this
23 part based on the independent financial audit report *or an audit*
24 *investigation conducted by the department.* The agency shall inform
25 the legislative body that the failure to correct a major audit
26 violation of this part may result in the filing of an action by the
27 Attorney General pursuant to Section 33080.8 *in a form that*
28 *indicates whether a referral to the Attorney General has been*
29 *made.*

30 (b) The legislative body shall review any report submitted
31 pursuant to Section 33080.1 and take any action it deems
32 appropriate on that report no later than the first meeting of the
33 legislative body occurring more than 21 days from the receipt of
34 the report.

35 SEC. 3. Section 33080.8 of the Health and Safety Code is
36 amended to read:

37 33080.8. (a) On or before April 1 of each year, the Controller
38 shall compile a list of agencies that appear to have major audit
39 violations as defined in this section, based on the independent

1 financial audit reports filed with the Controller pursuant to Section
2 33080.

3 (b) On or before June 1 of each year, for each major audit
4 violation of each agency identified pursuant to subdivision (a), the
5 Controller shall determine if the agency has corrected the major
6 audit violation. Before making this determination, the Controller
7 shall consult with each affected agency. In making this
8 determination, the Controller may request and shall receive the
9 prompt assistance of public officials and public agencies, including,
10 but not limited to, the affected agencies, counties, and cities. If the
11 Controller determines that an agency has not corrected the major
12 audit violation, the Controller shall send a list of those agencies,
13 their major violations, all relevant documents, and the affidavits
14 required pursuant to subdivision (d) to the Attorney General for
15 action pursuant to this section.

16 (c) For each agency that the Controller refers to the Attorney
17 General pursuant to subdivision (b), the Controller shall notify the
18 agency and the legislative body that the agency was on the list sent
19 to the Attorney General. The Controller's notice shall inform the
20 agency and the legislative body of the duties imposed by Section
21 33080.2.

22 (d) Within 45 days of receiving the referral from the Controller
23 pursuant to subdivision (b), the Attorney General shall determine
24 whether to file an action to compel the agency's compliance with
25 this part. Any action filed pursuant to this section shall be
26 commenced in the County of Sacramento. The time limit for the
27 Attorney General to make this determination is directory and not
28 mandatory. Any action shall be accompanied by an affidavit or
29 affidavits, to be provided by the Controller with the referral, setting
30 forth facts that demonstrate a likelihood of success on the merits
31 of the claim that the agency has a major audit violation. The
32 affidavit shall also certify that the agency and the legislative body
33 were informed not less than 10 days prior to the date on which the
34 action was filed. The agency shall file a response to any action
35 filed by the Attorney General pursuant to this section within 15
36 days of service.

37 (e) (1) On the earliest day that the business of the court will
38 permit, but not later than 45 days after the filing of an action
39 pursuant to this section, the court shall conduct a hearing to

1 determine if good cause exists for believing that the agency has a
2 major audit violation and has not corrected that violation.

3 (2) If the court determines that no good cause exists or that the
4 agency had a major audit violation but corrected the major audit
5 violation, the court shall dismiss the action.

6 (3) If the court determines that there is good cause for believing
7 that the agency has a major audit violation and has not corrected
8 that major audit violation, the court shall immediately issue an
9 order that prohibits the agency from doing any of the following:

10 (A) Encumbering any funds or expending any money derived
11 from any source except to pay the obligations designated in
12 subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision
13 (e) of Section 33334.12.

14 (B) Adopting a redevelopment plan.

15 (C) Amending a redevelopment plan except to correct the major
16 audit violation that is the subject of the action.

17 (D) Issuing, selling, offering for sale, or delivering any bonds
18 or any other evidence of indebtedness.

19 (E) Incurring any indebtedness.

20 (f) In a case that is subject to paragraph (3) of subdivision (e),
21 the court shall also set a hearing on the matter within 60 days.

22 (g) If, on the basis of that subsequent hearing, the court
23 determines that the agency has a major audit violation and has not
24 corrected that violation, the court shall order the agency to comply
25 with this part within 30 days, and order the agency to forfeit to the
26 state no more than:

27 (1) Two thousand dollars (\$2,000) in the case of a community
28 redevelopment agency with a total revenue, in the prior year, of
29 less than one hundred thousand dollars (\$100,000) as reported in
30 the Controller's annual financial reports.

31 (2) Five thousand dollars (\$5,000) in the case of a community
32 redevelopment agency with a total revenue, in the prior year, of
33 at least one hundred thousand dollars (\$100,000) but less than two
34 hundred fifty thousand dollars (\$250,000) as reported in the
35 Controller's annual financial reports.

36 (3) Ten thousand dollars (\$10,000) in the case of a community
37 redevelopment agency with a total revenue, in the prior year, of
38 at least two hundred fifty thousand dollars (\$250,000) as reported
39 in the Controller's annual financial reports.

1 (h) The order issued by the court pursuant to paragraph (3) of
2 subdivision (e) shall continue in effect until the court determines
3 that the agency has corrected the major audit violation. If the court
4 determines that the agency has corrected the major audit violation,
5 the court may dissolve its order issued pursuant to paragraph (3)
6 of subdivision (e) at any time.

7 (i) An action filed pursuant to this section to compel an agency
8 to comply with this part is in addition to any other remedy, and is
9 not an exclusive means to compel compliance.

10 (j) As used in this section, “major audit violation” means that,
11 for the fiscal year in question, an agency did not:

12 (1) File an independent financial audit report that substantially
13 conforms with the requirements of subdivision (a) of Section
14 33080.1.

15 (2) File a fiscal statement that includes substantially all of the
16 information required by Section 33080.5.

17 (3) Establish time limits, as required by Section 33333.6.

18 (4) Deposit all required tax increment revenues directly into the
19 Low and Moderate Income Housing Fund upon receipt, as required
20 by Section 33334.3, 33334.6, 33487, or 33492.16.

21 (5) Establish a Low and Moderate Income Housing Fund, as
22 required by subdivision (a) of Section 33334.3.

23 (6) Accrue interest earned by the Low and Moderate Income
24 Housing Fund to that fund, as required by subdivision (b) of
25 Section 33334.3.

26 ~~(7) Determine that the planning and administrative costs charged~~
27 ~~to the Low and Moderate Income Housing Fund are necessary for~~
28 ~~the production, improvement, or preservation of low- and~~
29 ~~moderate-income housing, as required by subdivision (d) of Section~~
30 ~~33334.3.~~

31 *(7) Comply with subdivisions (d) and (e) of Section 33334.3,*
32 *governing eligible expenditures for planning and general*
33 *administration from the Low and Moderate Income Housing Fund.*

34 (8) Initiate development of housing on real property acquired
35 using moneys from the Low and Moderate Income Housing Fund
36 or sell the property, as required by Section 33334.16.

37 (9) Adopt an implementation plan, as required by Section 33490.

38 SEC. 4. Section 33080.9 is added to the Health and Safety
39 Code, to read:

1 33080.9. (a) (1) The department shall forward to the Attorney
2 General and the Controller a copy of any audit or investigation of
3 a redevelopment agency conducted pursuant to Section 50464.5.

4 (2) On or before April 1 of each year, the department shall
5 determine for all audits and investigations conducted the previous
6 year, including those audits and investigations conducted pursuant
7 to Section 50464.5, whether an audit or investigation contains
8 major audit violations, as defined in subdivision (j) of Section
9 33080.8.

10 (b) On or before June 1 of each year, the department shall
11 determine for each major audit violation identified pursuant to
12 subdivision (a) if the agency has corrected the major audit
13 violation. Before making this determination, the department shall
14 consult with each affected agency. In making this determination,
15 the department may request and shall receive the prompt assistance
16 of public officials and public agencies, including, but not limited
17 to, the affected agencies, counties, and cities. If the department
18 determines an agency has not corrected the major audit violation,
19 the department shall send a list of those agencies, their major audit
20 violations, all relevant documentation, and the affidavits required
21 pursuant to subdivision (e) to the Attorney General for any action
22 pursuant to this section.

23 (c) For each agency the department refers to the Attorney
24 General pursuant to subdivision (b), the department shall notify
25 the agency and its legislative body that the agency was on the list
26 sent to the Attorney General. The notice shall inform the agency
27 and its legislative body of the duties imposed pursuant to Section
28 33080.2.

29 (d) The Attorney General shall determine whether to file an
30 action to compel the agency's compliance with this article within
31 45 days of receiving notice from the department regarding major
32 audit violations. Any action filed pursuant to this section shall be
33 commenced in the superior court of any county where the Attorney
34 General has an office. The time limit for the Attorney General to
35 make this determination is directory and not mandatory.

36 (e) Any action shall be accompanied by the affidavit or affidavits
37 setting forth the facts that demonstrate a likelihood of success on
38 the merits of the claim that the agency has a major audit violation.
39 The affidavit shall also certify that the agency and its legislative
40 body were notified of the action no less than 10 days prior to the

1 date on which the action was filed. The agency shall file a response
2 to any action filed by the Attorney General pursuant to this section
3 within 15 days of service.

4 (f) Nothing in this section shall be construed to permit the
5 department to initiate or settle litigation, or to resolve any
6 departmental audit or investigation in a manner contrary to law.

7 SEC. 5. Section 33080.10 is added to the Health and Safety
8 Code, to read:

9 33080.10. In an action to compel an agency’s compliance with
10 this article pursuant to Section 33080.9, all of the following shall
11 apply:

12 (a) (1) On the earliest day that the business of the court will
13 permit, but no later than 45 days after the filing of an action, the
14 court shall conduct a hearing to determine if good cause exists for
15 believing the agency has a major audit violation, as defined in
16 subdivision (j) of Section 33080.8, and has not corrected the major
17 audit violation.

18 (2) If the court determines that no major audit violation exists
19 or that the agency had a major audit violation and has corrected
20 the major audit violation, the court shall dismiss the action.

21 (3) If the court determines there is good cause to believe the
22 agency had a major audit violation and has not corrected that major
23 audit violation, the court shall set a hearing on the matter within
24 60 days. The court also shall issue immediately an order that
25 prohibits the agency from doing any of the following:

26 (A) Encumbering any funds or expending any money derived
27 from any source, other than a Low and Moderate Income Housing
28 Fund, except to pay the obligations designated in subparagraphs
29 (A) to (G), inclusive, of paragraph (1) of subdivision (e) of Section
30 33334.12.

31 (B) Adopting a redevelopment plan.

32 (C) Exercising the power of eminent domain.

33 (D) Amending a redevelopment plan, except to correct the major
34 audit violation that is the subject of the action.

35 (E) Issuing, selling, offering for sale, or delivering any bonds
36 or any other evidence of indebtedness, except to increase, improve,
37 preserve, or assist in the construction or rehabilitation of, housing
38 units that will be occupied by and affordable to persons or families
39 of extremely low, very low, low, or moderate income, in
40 accordance with this part.

1 (F) Incurring any indebtedness, except to increase, improve,
2 preserve, or assist in the construction or rehabilitation of, housing
3 units that will be occupied by and affordable to persons or families
4 of extremely low, very low, low, or moderate income, in
5 accordance with this part.

6 (b) If a court finds, on the basis of the subsequent hearing set
7 pursuant to paragraph (3) of subdivision (a), that the agency has
8 a major audit violation and has not corrected the major audit
9 violation, the court shall order the agency to comply with this
10 article within 30 days and order the agency to forfeit to the state
11 a monetary sanction commensurate with the violation.

12 (c) The order issued by the court pursuant to paragraph (3) of
13 subdivision (a) shall continue in effect until the court determines
14 the agency has corrected the major audit violation. If the court
15 determines that the agency has corrected the major audit violation,
16 the court may dissolve its order at any time.

17 (d) An action filed pursuant to this section is in addition to any
18 other remedy and is not an exclusive means to compel compliance.
19 This section is not intended to preclude an action to compel
20 compliance with this article by any other interested party or resident
21 of the jurisdiction.

22 SEC. 6. Section 33080.11 is added to the Health and Safety
23 Code, to read:

24 33080.11. (a) The Controller may conduct quality control
25 reviews of independent financial audit reports required by Section
26 33080.1 to the extent it is feasible to do so within existing
27 budgetary resources. The Controller shall communicate the results
28 of his or her reviews to the independent auditor and the agency
29 for which the audit was conducted, and shall review his or her
30 findings with the independent auditor.

31 (b) If the quality control review specified in subdivision (a)
32 indicates the audit was conducted in a manner that may constitute
33 unprofessional conduct, as defined in Section 5100 of the Business
34 and Professions Code, including, but not limited to, gross
35 negligence resulting in a material misstatement in the audit, the
36 Controller shall refer the case to the California Board of
37 Accountancy. If the board determines that the independent auditor
38 conducted an audit in an unprofessional manner, the independent
39 auditor is prohibited from performing any redevelopment agency

1 audit for a period of three years, in addition to any other penalties
2 the board may impose.

3 SEC. 7. Section 33080.12 is added to the Health and Safety
4 Code, to read:

5 33080.12. (a) (1) Whenever the Controller determines through
6 two consecutive quality control reviews, pursuant to Section
7 33080.11, that audits performed by an independent auditor pursuant
8 to Section 33080.1 were not performed in substantial conformity
9 with provisions of the audit and report guidelines adopted pursuant
10 to Section 33080.3, the Controller shall notify in writing the
11 independent auditor and the California Board of Accountancy.

12 (2) If the independent auditor does not file an appeal in writing
13 to the board within 30 calendar days after receipt of the Controller's
14 notification, the Controller's determination under this section shall
15 be final.

16 (3) If an appeal is filed with the California Board of
17 Accountancy, the board shall complete an investigation of the
18 appeal. On the basis of the investigation, the board may do either
19 of the following:

20 (A) Find the Controller's determination should not be upheld
21 and has no effect.

22 (B) Schedule the appeal for a hearing.

23 (b) If the Controller's determination pursuant to subdivision (a)
24 becomes final, the independent auditor shall be ineligible to
25 conduct audits pursuant to Section 33080.1 for a period of three
26 years, or, in the event of an appeal, for any period and subject to
27 conditions that may be ordered by the California Board of
28 Accountancy. No later than March 1 following the date on which
29 the Controller's determination becomes final, the Controller shall
30 notify each agency of those independent auditors determined to
31 be ineligible under this section or Section 33080.11. Agencies
32 shall not use the audit services of an independent auditor ineligible
33 under this section.

34 (c) For the purposes of this section, "independent auditor" shall
35 mean any person or firm entering into a contract to conduct an
36 audit under Section 33080.1.

37 (d) This section shall not preclude the California Board of
38 Accountancy from taking any disciplinary action it deems
39 appropriate under any other provisions of law.

1 SEC. 8. Section 33334.2 of the Health and Safety Code is
2 amended to read:

3 33334.2. (a) Except as provided in subdivision (k), not less
4 than 20 percent of all taxes that are allocated to the agency pursuant
5 to Section 33670 shall be used by the agency for the purposes of
6 increasing, improving, and preserving the community's supply of
7 low- and moderate-income housing available at affordable housing
8 cost, as defined by Section 50052.5, to persons and families of
9 low or moderate income, as defined in Section 50093, lower
10 income households, as defined by Section 50079.5, very low
11 income households, as defined in Section 50105, and extremely
12 low income households, as defined by Section 50106, that is
13 occupied by these persons and families, unless one of the following
14 findings is made annually by resolution:

15 (1) (A) That no need exists in the community to improve,
16 increase, or preserve the supply of low- and moderate-income
17 housing, including housing for very low income households in a
18 manner that would benefit the project area and that this finding is
19 consistent with the housing element of the community's general
20 plan required by Article 10.6 (commencing with Section 65580)
21 of Chapter 3 of Division 1 of Title 7 of the Government Code,
22 including its share of the regional housing needs of very low
23 income households and persons and families of low or moderate
24 income.

25 (B) This finding shall only be made if the housing element of
26 the community's general plan demonstrates that the community
27 does not have a need to improve, increase, or preserve the supply
28 of low- and moderate-income housing available at affordable
29 housing cost to persons and families of low or moderate income
30 and to very low income households. This finding shall only be
31 made if it is consistent with the planning agency's annual report
32 to the legislative body on implementation of the housing element
33 required by subdivision (b) of Section 65400 of the Government
34 Code. No agency of a charter city shall make this finding unless
35 the planning agency submits the report pursuant to subdivision (b)
36 of Section 65400 of the Government Code. This finding shall not
37 take effect until the agency has complied with subdivision (b) of
38 this section.

39 (2) (A) That some stated percentage less than 20 percent of the
40 taxes that are allocated to the agency pursuant to Section 33670

1 is sufficient to meet the housing needs of the community, including
2 its share of the regional housing needs of persons and families of
3 low- or moderate-income and very low income households, and
4 that this finding is consistent with the housing element of the
5 community's general plan required by Article 10.6 (commencing
6 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
7 Government Code.

8 (B) This finding shall only be made if the housing element of
9 the community's general plan demonstrates that a percentage of
10 less than 20 percent will be sufficient to meet the community's
11 need to improve, increase, or preserve the supply of low- and
12 moderate-income housing available at affordable housing cost to
13 persons and families of low or moderate income and to very low
14 income households. This finding shall only be made if it is
15 consistent with the planning agency's annual report to the
16 legislative body on implementation of the housing element required
17 by subdivision (b) of Section 65400 of the Government Code. No
18 agency of a charter city shall make this finding unless the planning
19 agency submits the report pursuant to subdivision (b) of Section
20 65400 of the Government Code. This finding shall not take effect
21 until the agency has complied with subdivision (b) of this section.

22 (C) For purposes of making the findings specified in this
23 paragraph and paragraph (1), the housing element of the general
24 plan of a city, county, or city and county shall be current, and shall
25 have been determined by the department pursuant to Section 65585
26 to be in substantial compliance with Article 10.6 (commencing
27 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
28 Government Code.

29 (3) (A) That the community is making a substantial effort to
30 meet its existing and projected housing needs, including its share
31 of the regional housing needs, with respect to persons and families
32 of low and moderate income, particularly very low income
33 households, as identified in the housing element of the
34 community's general plan required by Article 10.6 (commencing
35 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
36 Government Code, and that this effort, consisting of direct financial
37 contributions of local funds used to increase and improve the
38 supply of housing affordable to, and occupied by, persons and
39 families of low or moderate income and very low income
40 households is equivalent in impact to the funds otherwise required

1 to be set aside pursuant to this section. In addition to any other
2 local funds, these direct financial contributions may include federal
3 or state grants paid directly to a community and that the community
4 has the discretion of using for the purposes for which moneys in
5 the Low and Moderate Income Housing Fund may be used. The
6 legislative body shall consider the need that can be reasonably
7 foreseen because of displacement of persons and families of low
8 or moderate income or very low income households from within,
9 or adjacent to, the project area, because of increased employment
10 opportunities, or because of any other direct or indirect result of
11 implementation of the redevelopment plan. No finding under this
12 subdivision may be made until the community has provided or
13 ensured the availability of replacement dwelling units as defined
14 in Section 33411.2 and until it has complied with Article 9
15 (commencing with Section 33410).

16 (B) In making the determination that other financial
17 contributions are equivalent in impact pursuant to this subdivision,
18 the agency shall include only those financial contributions that are
19 directly related to programs or activities authorized under
20 subdivision (e).

21 (C) The authority for making the finding specified in this
22 paragraph shall expire on June 30, 1993, except that the expiration
23 shall not be deemed to impair contractual obligations to
24 bondholders or private entities incurred prior to May 1, 1991, and
25 made in reliance on the provisions of this paragraph. Agencies that
26 make this finding after June 30, 1993, shall show evidence that
27 the agency entered into the specific contractual obligation with
28 the specific intention of making a finding under this paragraph in
29 order to provide sufficient revenues to pay off the indebtedness.

30 (b) Within 10 days following the making of a finding under
31 either paragraph (1) or (2) of subdivision (a), the agency shall send
32 the Department of Housing and Community Development a copy
33 of the finding, including the factual information supporting the
34 finding and other factual information in the housing element that
35 demonstrates that either (1) the community does not need to
36 increase, improve, or preserve the supply of housing for low- and
37 moderate-income households, including very low income
38 households, or (2) a percentage less than 20 percent will be
39 sufficient to meet the community's need to improve, increase, and
40 preserve the supply of housing for low- and moderate-income

1 households, including very low income households. Within 10
2 days following the making of a finding under paragraph (3) of
3 subdivision (a), the agency shall send the Department of Housing
4 and Community Development a copy of the finding, including the
5 factual information supporting the finding that the community is
6 making a substantial effort to meet its existing and projected
7 housing needs. Agencies that make this finding after June 30, 1993,
8 shall also submit evidence to the department of its contractual
9 obligations with bondholders or private entities incurred prior to
10 May 1, 1991, and made in reliance on this finding.

11 (c) In any litigation to challenge or attack a finding made under
12 paragraph (1), (2), or (3) of subdivision (a), the burden shall be
13 upon the agency to establish that the finding is supported by
14 substantial evidence in light of the entire record before the agency.
15 If an agency is determined by a court to have knowingly
16 misrepresented any material facts regarding the community's share
17 of its regional housing need for low- and moderate-income housing,
18 including very low income households, or the community's
19 production record in meeting its share of the regional housing need
20 pursuant to the report required by subdivision (b) of Section 65400
21 of the Government Code, the agency shall be liable for all court
22 costs and plaintiff's attorney's fees, and shall be required to allocate
23 not less than 25 percent of the agency's tax increment revenues to
24 its Low and Moderate Income Housing Fund in each year
25 thereafter.

26 (d) Nothing in this section shall be construed as relieving any
27 other public entity or entity with the power of eminent domain of
28 any legal obligations for replacement or relocation housing arising
29 out of its activities.

30 (e) In carrying out the purposes of this section, the agency may
31 exercise any or all of its powers for the construction, rehabilitation,
32 or preservation of affordable housing for extremely low, very low,
33 low-, and moderate-income persons or families, including the
34 following:

35 (1) Acquire real property or building sites subject to Section
36 33334.16.

37 (2) (A) Improve real property or building sites with onsite or
38 offsite improvements, but only if both (i) the improvements are
39 part of the new construction or rehabilitation of affordable housing
40 units for low- or moderate-income persons that are directly

1 benefited by the improvements, and are a reasonable and
2 fundamental component of the housing units, and (ii) the agency
3 requires that the units remain available at affordable housing cost
4 to, and occupied by, persons and families of extremely low, very
5 low, low, or moderate income for the same time period and in the
6 same manner as provided in subdivision (c) and paragraph (2) of
7 subdivision (f) of Section 33334.3.

8 (B) If the newly constructed or rehabilitated housing units are
9 part of a larger project and the agency improves or pays for onsite
10 or offsite improvements pursuant to the authority in this
11 subdivision, the agency shall pay only a portion of the total cost
12 of the onsite or offsite improvement. The maximum percentage
13 of the total cost of the improvement paid for by the agency shall
14 be determined by dividing the number of housing units that are
15 affordable to low- or moderate-income persons by the total number
16 of housing units, if the project is a housing project, or by dividing
17 the cost of the affordable housing units by the total cost of the
18 project, if the project is not a housing project.

19 (3) Donate real property to private or public persons or entities.

20 (4) Finance insurance premiums pursuant to Section 33136.

21 (5) Construct buildings or structures.

22 (6) Acquire buildings or structures.

23 (7) Rehabilitate buildings or structures.

24 (8) Provide subsidies to, or for the benefit of, extremely low
25 income households, as defined by Section 50106, very low income
26 households, as defined by Section 50105, lower income
27 households, as defined by Section 50079.5, or persons and families
28 of low or moderate income, as defined by Section 50093, to the
29 extent those households cannot obtain housing at affordable costs
30 on the open market. Housing units available on the open market
31 are those units developed without direct government subsidies.

32 (9) Develop plans, pay principal and interest on bonds, loans,
33 advances, or other indebtedness, or pay financing or carrying
34 charges.

35 (10) Maintain the community's supply of mobilehomes.

36 (11) Preserve the availability to lower income households of
37 affordable housing units in housing developments that are assisted
38 or subsidized by public entities and that are threatened with
39 imminent conversion to market rates.

1 (f) The agency may use these funds to meet, in whole or in part,
2 the replacement housing provisions in Section 33413. However,
3 nothing in this section shall be construed as limiting in any way
4 the requirements of that section.

5 (g) (1) The agency may use these funds inside or outside the
6 project area. The agency may only use these funds outside the
7 project area upon a resolution of the agency and the legislative
8 body that the use will be of benefit to the project. The
9 determination by the agency and the legislative body shall be final
10 and conclusive as to the issue of benefit to the project area. The
11 Legislature finds and declares that the provision of replacement
12 housing pursuant to Section 33413 is always of benefit to a project.
13 Unless the legislative body finds, before the redevelopment plan
14 is adopted, that the provision of low- and moderate-income housing
15 outside the project area will be of benefit to the project, the project
16 area shall include property suitable for low- and moderate-income
17 housing.

18 (2) (A) The Contra Costa County Redevelopment Agency may
19 use these funds anywhere within the unincorporated territory, or
20 within the incorporated limits of the City of Walnut Creek on sites
21 contiguous to the Pleasant Hill BART Station Area Redevelopment
22 Project area. The agency may only use these funds outside the
23 project area upon a resolution of the agency and board of
24 supervisors determining that the use will be of benefit to the project
25 area. In addition, the agency may use these funds within the
26 incorporated limits of the City of Walnut Creek only if the agency
27 and the board of supervisors find all of the following:

28 (i) Both the County of Contra Costa and the City of Walnut
29 Creek have adopted and are implementing complete and current
30 housing elements of their general plans that the Department of
31 Housing and Community Development has determined to be in
32 compliance with the requirements of Article 10.6 (commencing
33 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
34 Government Code.

35 (ii) The development to be funded shall not result in any
36 residential displacement from the site where the development is
37 to be built.

38 (iii) The development to be funded shall not be constructed in
39 an area that currently has more than 50 percent of its population
40 comprised of racial minorities or low-income families.

1 (iv) The development to be funded shall allow construction of
2 affordable housing closer to a rapid transit station than could be
3 constructed in the unincorporated territory outside the Pleasant
4 Hill BART Station Area Redevelopment Project.

5 (B) If the agency uses these funds within the incorporated limits
6 of the City of Walnut Creek, all of the following requirements
7 shall apply:

8 (i) The funds shall be used only for the acquisition of land for,
9 and the design and construction of, the development of housing
10 containing units affordable to, and occupied by, low- and
11 moderate-income persons.

12 (ii) If less than all the units in the development are affordable
13 to, and occupied by, low- or moderate-income persons, any agency
14 assistance shall not exceed the amount needed to make the housing
15 affordable to, and occupied by, low- or moderate-income persons.

16 (iii) The units in the development that are affordable to, and
17 occupied by, low- or moderate-income persons shall remain
18 affordable for a period of at least 55 years.

19 (iv) The agency and the City of Walnut Creek shall determine,
20 if applicable, whether Article XXXIV of the California Constitution
21 permits the development.

22 (h) The Legislature finds and declares that expenditures or
23 obligations incurred by the agency pursuant to this section shall
24 constitute an indebtedness of the project.

25 (i) This section shall only apply to taxes allocated to a
26 redevelopment agency for which a final redevelopment plan is
27 adopted on or after January 1, 1977, or for any area that is added
28 to a project by an amendment to a redevelopment plan, which
29 amendment is adopted on or after the effective date of this section.
30 An agency may, by resolution, elect to make all or part of the
31 requirements of this section applicable to any redevelopment
32 project for which a redevelopment plan was adopted prior to
33 January 1, 1977, subject to any indebtedness incurred prior to the
34 election.

35 (j) (1) (A) An action to compel compliance with the
36 requirement of Section 33334.3 to deposit not less than 20 percent
37 of all taxes that are allocated to the agency pursuant to Section
38 33670 in the Low and Moderate Income Housing Fund shall be
39 commenced within 10 years of the alleged violation. A cause of
40 action for a violation accrues on the last day of the fiscal year in

1 which the funds were required to be deposited in the Low and
2 Moderate Income Housing Fund.

3 (B) An action to compel compliance with the requirement of
4 this section or Section 33334.6 that money deposited in the Low
5 and Moderate Income Housing Fund be used by the agency for
6 purposes of increasing, improving, and preserving the community's
7 supply of low- and moderate-income housing available at
8 affordable housing cost shall be commenced within 10 years of
9 the alleged violation. A cause of action for a violation accrues on
10 the date of the actual expenditure of the funds.

11 (C) An agency found to have deposited less into the Low and
12 Moderate Income Housing Fund than mandated by Section 33334.3
13 or to have spent money from the Low and Moderate Income
14 Housing Fund for purposes other than increasing, improving, and
15 preserving the community's supply of low- and moderate-income
16 housing, as mandated, by this section or Section 33334.3 or
17 33334.6 shall repay the funds with interest, *plus an additional 50*
18 *percent of that amount and interest*, in one lump sum pursuant to
19 Section 970.4 or 970.5 of the Government Code or may do either
20 of the following:

21 (i) Petition the court under Section 970.6 for repayment in
22 installments.

23 (ii) Repay the portion of the judgment due to the Low and
24 Moderate Income Housing Fund in equal installments over a period
25 of five years following the judgment.

26 (2) Repayment shall not be made from the funds required to be
27 set aside or used for low- and moderate-income housing pursuant
28 to this section.

29 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of
30 paragraph (1), all costs, including reasonable attorney's fees if
31 included in the judgment, are due and shall be paid upon entry of
32 judgment or order.

33 (4) Except as otherwise provided in this subdivision, Chapter
34 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title
35 1 of the Government Code for the enforcement of a judgment
36 against a local public entity applies to a judgment against a local
37 public entity that violates this section.

38 (5) This subdivision applies to actions filed on and after January
39 1, 2006.

1 (6) The limitations period specified in subparagraphs (A) and
2 (B) of paragraph (1) does not apply to a cause of action brought
3 pursuant to Chapter 9 (commencing with Section 860) of Title 10
4 of Part 2 of the Code of Civil Procedure.

5 (k) (1) From July 1, 2009, to June 30, 2010, inclusive, an agency
6 may suspend all or part of its required allocation to the Low and
7 Moderate Income Housing Fund from taxes that are allocated to
8 that agency pursuant to Section 33670.

9 (2) An agency that suspends revenue pursuant to paragraph (1)
10 shall pay back to its low- and moderate-income housing fund the
11 amount of revenue that was suspended in the 2009–10 fiscal year
12 pursuant to this subdivision from July 1, 2010, to June 30, 2015,
13 inclusive.

14 (3) An agency that suspends revenue pursuant to paragraph (1)
15 and fails to repay or have repaid on its behalf the amount of revenue
16 suspended pursuant to paragraph (2) shall, commencing July 1,
17 2015, be required to allocate an additional 5 percent of all taxes
18 that are allocated to that agency pursuant to Section 33670 for low-
19 and moderate-income housing for the remainder of the time that
20 the agency receives allocations of tax revenue pursuant to Section
21 33670.

22 (4) An agency that fails to pay or have paid on its behalf the
23 full amount calculated pursuant to subparagraph (J) of paragraph
24 (2) of subdivision (a) of Section 33690, or subparagraph (J) of
25 paragraph (2) of subdivision (a) of Section 33690.5, as the case
26 may be, shall, commencing July 1, 2010, or July 1, 2011, as
27 applicable, be required to allocate an additional 5 percent of all
28 taxes that are allocated to that agency pursuant to Section 33670
29 for low- and moderate-income housing for the remainder of the
30 time that the agency receives allocations of tax revenue pursuant
31 to Section 33670.

32 SEC. 9. Section 33334.3 of the Health and Safety Code is
33 amended to read:

34 33334.3. (a) The funds that are required by Section 33334.2
35 or 33334.6 to be used for the purposes of increasing, improving,
36 and preserving the community's supply of low- and
37 moderate-income housing shall be held in a separate Low and
38 Moderate Income Housing Fund until used.

39 (b) Any interest earned by the Low and Moderate Income
40 Housing Fund and any repayments or other income to the agency

1 for loans, advances, or grants, of any kind from the Low and
2 Moderate Income Housing Fund, shall accrue to and be deposited
3 in, the fund and may only be used in the manner prescribed for the
4 Low and Moderate Income Housing Fund.

5 (c) The moneys in the Low and Moderate Income Housing Fund
6 shall be used to increase, improve, and preserve the supply of low-
7 and moderate-income housing within the territorial jurisdiction of
8 the agency.

9 ~~(d) It is the intent of the Legislature that the Low and Moderate~~
10 ~~Income Housing Fund be used to the maximum extent possible to~~
11 ~~defray the costs of production, improvement, and preservation of~~
12 ~~low- and moderate-income housing and that the amount of money~~
13 ~~spent for planning and general administrative activities associated~~
14 ~~with the development, improvement, and preservation of that~~
15 ~~housing not be disproportionate to the amount actually spent for~~
16 ~~the costs of production, improvement, or preservation of that~~
17 ~~housing. The agency shall determine annually that the planning~~
18 ~~and administrative expenses are necessary for the production,~~
19 ~~improvement, or preservation of low- and moderate-income~~
20 ~~housing.~~

21 (e) (1) ~~Planning and general administrative costs which may~~
22 ~~be paid with moneys from the Low and Moderate Income Housing~~
23 ~~Fund are those expenses incurred by the agency which are directly~~
24 ~~related to the programs and activities authorized under subdivision~~
25 ~~(e) of Section 33334.2 and are limited to the following:~~

26 (A) ~~Costs incurred for salaries, wages, and related costs of the~~
27 ~~agency's staff or for services provided through interagency~~
28 ~~agreements, and agreements with contractors, including usual~~
29 ~~indirect costs related thereto.~~

30 (B) ~~Costs incurred by a nonprofit corporation which are not~~
31 ~~directly attributable to a specific project.~~

32 (2) ~~Legal, architectural, and engineering costs and other salaries,~~
33 ~~wages, and costs directly related to the planning and execution of~~
34 ~~a specific project that are authorized under subdivision (e) of~~
35 ~~Section 33334.2 and that are incurred by a nonprofit housing~~
36 ~~sponsor are not planning and administrative costs for the purposes~~
37 ~~of this section, but are instead project costs.~~

38 (d) (1) *It is the intent of the Legislature that the Low and*
39 *Moderate Income Housing Fund be used to the maximum extent*
40 *possible to defray the actual cost of producing, improving, or*

1 *preserving low- and moderate-income housing and to reasonably*
2 *restrict the use of Low and Moderate Income Housing Fund moneys*
3 *for planning and general administrative costs. Subject to the*
4 *restrictions set forth in paragraph (2), all of the following costs*
5 *shall be considered planning and general administrative costs for*
6 *the purposes of funds paid from the Low and Moderate Income*
7 *Housing Fund:*

8 (A) *Employee compensation costs, including salaries, wages,*
9 *and benefits, and related nonpersonnel costs, including, but not*
10 *limited to, travel, training, publications, and conferences, paid to*
11 *or on behalf of any agency, city, or county employee whose duties*
12 *include activities authorized under subdivision (e) of Section*
13 *33334.2. If the employee spends any time on matters other than*
14 *those authorized under subdivision (e) of Section 33334.2, Low*
15 *and Moderate Income Housing Fund moneys may only be used to*
16 *pay for employee compensation and related nonpersonnel costs*
17 *in proportion to the actual time that the employee spends on*
18 *activities authorized under subdivision (e) of Section 33334.2.*

19 (B) *Employee compensation costs, including salaries, wages,*
20 *and benefits, paid to or on behalf of any agency, city, or county*
21 *employee who supervises or manages the work of an employee or*
22 *employees specified in subparagraph (A) or who provides general*
23 *administrative services, including, but not limited to, finance, legal,*
24 *human resources, information technology, and other administrative*
25 *services, that indirectly support activities authorized under*
26 *subdivision (e) of Section 33334.2 and nonpersonnel costs,*
27 *including, but not limited to, travel, training, publications, and*
28 *conferences, for such employees that are directly related to such*
29 *activities. Employee compensation costs shall (i) be justified by*
30 *an independent cost allocation study no more than six years old,*
31 *and (ii) not represent a greater proportion of the employee's total*
32 *compensation than the proportion of employees working directly*
33 *and exclusively on activities authorized under subdivision (e) of*
34 *Section 33334.2 in comparison to the total number of employees*
35 *supervised, managed, or indirectly supported by that employee.*

36 (C) *Overhead costs, including, but not limited to, rent or*
37 *mortgage payments, equipment, and office supplies, provided that*
38 *if the overhead costs are shared with departments or employees*
39 *whose duties include activities other than those authorized under*
40 *subdivision (e) of Section 33334.2. The proportion of the overhead*

1 costs paid from the Low and Moderate Income Housing Fund shall
2 not exceed the proportion of employees working directly and
3 exclusively on activities authorized under subdivision (e) of Section
4 33334.2 represented in comparison to the total number of
5 employees sharing the space, equipment, or office supplies.

6 (D) The total value of any contracts for agency planning or
7 administrative services that are directly related to activities
8 authorized under subdivision (e) of Section 33334.2 and that are
9 not associated with a specific development project or program to
10 meet the requirements of Sections 33334.2, 33334.3, 33412, and
11 33413.

12 (2) (A) Except as provided in subparagraph (B), an agency in
13 any fiscal year shall not expend more than 15 percent of the tax
14 increment deposited into the Low and Moderate Income Housing
15 Fund for planning and general administrative costs.

16 (B) Subparagraph (A) shall not apply to a project area-specific
17 Low and Moderate Income Housing Fund during the first five
18 fiscal years after adoption of that specific project area.
19 Subparagraph (A) shall apply to a new or amended project area
20 if tax increment for that new or amended project area is deposited
21 into an aggregate Low and Moderate Income Housing Fund
22 covering more than one project area.

23 (3) At the time the budget is adopted, the agency shall annually
24 adopt a separate written resolution making a finding, based on
25 substantial evidence in the record, that the planning and general
26 administrative expenses budgeted for the fiscal year to be paid
27 from the Low and Moderate Income Housing Fund shall not exceed
28 15 percent of the tax increment to be deposited into the Low and
29 Moderate Income Housing Fund for that fiscal year or that the
30 exception in subparagraph (B) of paragraph (2) applies. The
31 resolution shall do all of the following:

32 (A) State the percentage of tax increment to be deposited into
33 the Low and Moderate Income Housing Fund that is budgeted for
34 planning and general administration in the fiscal year.

35 (B) Be consistent with paragraph (1), itemize each category of
36 planning and general administration expenditures from the Low
37 and Moderate Income Housing Fund and explicitly describe how
38 the expenditures are necessary for the production, improvement,
39 or preservation of low- and moderate-income housing.

1 (C) List the title of any agency, city, or county employees for
2 whom any portion of his or her salary, wages, benefits, or
3 nonpersonnel costs is paid from the Low and Moderate Income
4 Housing Fund, the nature of the employee's activities eligible to
5 be paid from the Low and Moderate Income Housing Fund, the
6 percentage of time the employees spends on activities eligible to
7 be paid from the Low and Moderate Income Housing Fund, and
8 the percentage of the employee's salary, wages, benefits, and
9 nonpersonnel costs paid from the Low and Moderate Income
10 Housing Fund.

11 (D) List any overhead costs that are paid directly or indirectly
12 from the Low and Moderate Income Housing Fund, identify by
13 title and department any other employees with whom the overhead
14 costs are shared, and specify the total cost of the shared overhead
15 costs.

16 (e) Notwithstanding paragraph (1) of subdivision (d), the agency
17 shall not expend moneys from the Low and Moderate Income
18 Housing Fund for any of the following purposes:

19 (1) Code enforcement.

20 (2) Land use planning activities of a planning department,
21 including development or revision of the general plan housing
22 element, except for the payment of normal project-related planning
23 fees applicable to all similar development projects.

24 (3) Lobbying. The Legislature finds and declares that this
25 paragraph is declaratory of existing law.

26 (4) Administration of nonredevelopment activities, including
27 housing programs funded with federal, state, or local funds.

28 (5) Direct or indirect administration of an activity authorized
29 under subdivision (e) of Section 33334.2 but that is not funded
30 with Low and Moderate Income Housing Fund moneys.

31 (f) (1) The requirements of this subdivision apply to all new or
32 substantially rehabilitated housing units developed or otherwise
33 assisted with moneys from the Low and Moderate Income Housing
34 Fund, pursuant to an agreement approved by an agency on or after
35 January 1, 1988. Except to the extent that a longer period of time
36 may be required by other provisions of law, the agency shall require
37 that housing units subject to this subdivision shall remain available
38 at affordable housing cost to, and occupied by, persons and families
39 of low or moderate income and very low income and extremely

1 low income households for the longest feasible time, but for not
2 less than the following periods of time:

3 (A) Fifty-five years for rental units. However, the agency may
4 replace rental units with equally affordable and comparable rental
5 units in another location within the community if (i) the
6 replacement units are available for occupancy prior to the
7 displacement of any persons and families of low or moderate
8 income residing in the units to be replaced and (ii) the comparable
9 replacement units are not developed with moneys from the Low
10 and Moderate Income Housing Fund.

11 (B) Forty-five years for owner-occupied units. However, the
12 agency may permit sales of owner-occupied units prior to the
13 expiration of the 45-year period for a price in excess of that
14 otherwise permitted under this subdivision pursuant to an adopted
15 program which protects the agency's investment of moneys from
16 the Low and Moderate Income Housing Fund, including, but not
17 limited to, an equity sharing program which establishes a schedule
18 of equity sharing that permits retention by the seller of a portion
19 of those excess proceeds based on the length of occupancy. The
20 remainder of the excess proceeds of the sale shall be allocated to
21 the agency and deposited in the Low and Moderate Income
22 Housing Fund. Only the units originally assisted by the agency
23 shall be counted towards the agency's obligations under Section
24 33413.

25 (C) Fifteen years for mutual self-help housing units that are
26 occupied by and affordable to very low and low-income
27 households. However, the agency may permit sales of mutual
28 self-help housing units prior to expiration of the 15-year period
29 for a price in excess of that otherwise permitted under this
30 subdivision pursuant to an adopted program that (i) protects the
31 agency's investment of moneys from the Low and Moderate
32 Income Housing Fund, including, but not limited to, an equity
33 sharing program that establishes a schedule of equity sharing that
34 permits retention by the seller of a portion of those excess proceeds
35 based on the length of occupancy; and (ii) ensures through a
36 recorded regulatory agreement, deed of trust, or similar recorded
37 instrument that if a mutual self-help housing unit is sold at any
38 time after expiration of the 15-year period and prior to 45 years
39 after the date of recording of the covenants or restrictions required
40 pursuant to paragraph (2), the agency recovers, at a minimum, its

1 original principal from the Low and Moderate Income Housing
2 Fund from the proceeds of the sale and deposits those funds into
3 the Low and Moderate Income Housing Fund. The remainder of
4 the excess proceeds of the sale not retained by the seller shall be
5 allocated to the agency and deposited in the Low and Moderate
6 Income Housing Fund. For the purposes of this subparagraph,
7 “mutual self-help housing unit” means an owner-occupied housing
8 unit for which persons and families of very low and low income
9 contribute no fewer than 500 hours of their own labor in individual
10 or group efforts to provide a decent, safe, and sanitary ownership
11 housing unit for themselves, their families, and others authorized
12 to occupy that unit. Nothing in this subparagraph precludes the
13 agency and the developer of the mutual self-help housing units
14 from agreeing to 45-year deed restrictions.

15 (2) If land on which those dwelling units are located is deleted
16 from the project area, the agency shall continue to require that
17 those units remain affordable as specified in this subdivision.

18 (3) The agency shall require the recording in the office of the
19 county recorder of the following documents:

20 (A) The covenants or restrictions implementing this subdivision
21 for each parcel or unit of real property subject to this subdivision.
22 The agency shall obtain and maintain a copy of the recorded
23 covenants or restrictions for not less than the life of the covenant
24 or restriction.

25 (B) For all new or substantially rehabilitated units developed
26 or otherwise assisted with moneys from the Low and Moderate
27 Income Housing Fund on or after January 1, 2008, a separate
28 document called “Notice of Affordability Restrictions on Transfer
29 of Property,” set forth in 14-point type or larger. This document
30 shall contain all of the following information:

31 (i) A recitation of the affordability covenants or restrictions. If
32 the document recorded under this subparagraph is recorded
33 concurrently with the covenants or restrictions recorded under
34 subparagraph (A), the recitation of the affordability covenants or
35 restrictions shall also reference the concurrently recorded
36 document. If the document recorded under this subparagraph is
37 not recorded concurrently with the covenants or restrictions
38 recorded under subparagraph (A), the recitation of the affordability
39 covenants or restrictions shall also reference the recorder’s

1 identification number of the document recorded under subparagraph
2 (A).
3 (ii) The date the covenants or restrictions expire.
4 (iii) The street address of the property, including, if applicable,
5 the unit number, unless the property is used to confidentially house
6 victims of domestic violence.
7 (iv) The assessor's parcel number for the property.
8 (v) The legal description of the property.
9 (4) The agency shall require the recording of the document
10 required under subparagraph (B) of paragraph (3) not more than
11 30 days after the date of recordation of the covenants or restrictions
12 required under subparagraph (A) of paragraph (3).
13 (5) The county recorder shall index the documents required to
14 be recorded under paragraph (3) by the agency and current owner.
15 (6) Notwithstanding Section 27383 of the Government Code,
16 a county recorder may charge all authorized recording fees to any
17 party, including a public agency, for recording the document
18 specified in subparagraph (B) of paragraph (3).
19 (7) Notwithstanding any other provision of law, the covenants
20 or restrictions implementing this subdivision shall run with the
21 land and shall be enforceable against any owner who violates a
22 covenant or restriction and each successor in interest who continues
23 the violation, by any of the following:
24 (A) The agency.
25 (B) The community, as defined in Section 33002.
26 (C) A resident of a unit subject to this subdivision.
27 (D) A residents' association with members who reside in units
28 subject to this subdivision.
29 (E) A former resident of a unit subject to this subdivision who
30 last resided in that unit.
31 (F) An applicant seeking to enforce the covenants or restrictions
32 for a particular unit that is subject to this subdivision, if the
33 applicant conforms to all of the following:
34 (i) Is of low or moderate income, as defined in Section 50093.
35 (ii) Is able and willing to occupy that particular unit.
36 (iii) Was denied occupancy of that particular unit due to an
37 alleged breach of a covenant or restriction implementing this
38 subdivision.

1 (G) A person on an affordable housing waiting list who is of
2 low or moderate income, as defined in Section 50093, and who is
3 able and willing to occupy a unit subject to this subdivision.

4 (8) A dwelling unit shall not be counted as satisfying the
5 affordable housing requirements of this part, unless covenants for
6 that dwelling unit are recorded in compliance with subparagraph
7 (A) of paragraph (3).

8 (9) Failure to comply with the requirements of subparagraph
9 (B) of paragraph (3) shall not invalidate any covenants or
10 restrictions recorded pursuant to subparagraph (A) of paragraph
11 (3).

12 (g) “Housing,” as used in this section, includes residential hotels,
13 as defined in subdivision (k) of Section 37912. The definitions of
14 “lower income households,” “very low income households,” and
15 “extremely low income households” in Sections 50079.5, 50105,
16 and 50106 shall apply to this section. “Longest feasible time,” as
17 used in this section, includes, but is not limited to, unlimited
18 duration.

19 (h) “Increasing, improving, and preserving the community’s
20 supply of low- and moderate-income housing,” as used in this
21 section and in Section 33334.2, includes the preservation of rental
22 housing units assisted by federal, state, or local government on the
23 condition that units remain affordable to, and occupied by, low-
24 and moderate-income households, including extremely low and
25 very low income households, for the longest feasible time, but not
26 less than 55 years, beyond the date the subsidies and use restrictions
27 could be terminated and the assisted housing units converted to
28 market rate rentals. In preserving these units the agency shall
29 require that the units remain affordable to, and occupied by, persons
30 and families of low- and moderate-income and extremely low and
31 very low income households for the longest feasible time but not
32 less than 55 years. However, the agency may replace rental units
33 with equally affordable and comparable rental units in another
34 location within the community if (1) the replacement units in
35 another location are available for occupancy prior to the
36 displacement of any persons and families of low or moderate
37 income residing in the units to be replaced and (2) the comparable
38 replacement units are not developed with moneys from the Low
39 and Moderate Income Housing Fund.

1 (i) Agencies that have more than one project area may satisfy
 2 the requirements of Sections 33334.2 and 33334.6 and of this
 3 section by allocating, in any fiscal year, less than 20 percent in
 4 one project area, if the difference between the amount allocated
 5 and the 20 percent required is instead allocated, in that same fiscal
 6 year, to the Low and Moderate Income Housing Fund from tax
 7 increment revenues from other project areas. Prior to allocating
 8 funds pursuant to this subdivision, the agency shall make the
 9 finding required by subdivision (g) of Section 33334.2.

10 (j) Funds from the Low and Moderate Income Housing Fund
 11 shall not be used to the extent that other reasonable means of
 12 private or commercial financing of the new or substantially
 13 rehabilitated units at the same level of affordability and quantity
 14 are reasonably available to the agency or to the owner of the units.
 15 Prior to the expenditure of funds from the Low and Moderate
 16 Income Housing Fund for new or substantially rehabilitated
 17 housing units, where those funds will exceed 50 percent of the
 18 cost of producing the units, the agency shall find, based on
 19 substantial evidence, that the use of the funds is necessary because
 20 the agency or owner of the units has made a good faith attempt
 21 but been unable to obtain commercial or private means of financing
 22 the units at the same level of affordability and quantity.

23 SEC. 10. Section 33334.4 of the Health and Safety Code is
 24 amended to read:

25 33334.4. (a) Except as specified in subdivision (d), ~~each~~
 26 ~~agency shall expend over~~ *during* each 10-year period of the
 27 implementation plan, as specified in clause (iii) of subparagraph
 28 (A) of paragraph (2) of subdivision (a) of Section 33490, ~~the~~
 29 ~~moneys in~~ *at least 70 percent of each agency's expenditures from*
 30 ~~the Low and Moderate Income Housing Fund to~~ *shall directly*
 31 *assist the new construction, acquisition, and substantial*
 32 *rehabilitation or preservation of rental housing for persons of*
 33 *extremely low, very low, or low income and housing for persons*
 34 *of very low income in at least the same proportion as the total*
 35 *number of housing units needed for each of those income groups*
 36 *bears to the total number of units needed for persons of moderate,*
 37 *low, and very low income within the community, as those needs*
 38 *have been determined for the community pursuant to Section 65584*
 39 *of the Government Code. In determining compliance with this*
 40 *obligation, the agency may adjust the proportion by subtracting*

1 from the need identified for each income category, the number of
2 units for persons of that income category that are newly constructed
3 over the duration of the implementation plan with other locally
4 controlled government assistance and without agency assistance
5 and that are required to be affordable to, and occupied by, persons
6 of the income category for at least 55 years for rental housing and
7 45 years for ownership housing, except that in making an
8 adjustment the agency may not subtract units developed pursuant
9 to a replacement housing obligation under state or federal law and
10 at least 20 percent of these expenditures shall directly assist the
11 new construction, acquisition, and substantial rehabilitation, or
12 preservation of rental housing for persons of extremely low income.
13 The expenditures for extremely low income rental housing shall
14 count towards the requirement to directly assist very low and
15 low-income rental housing. For purposes of this subdivision,
16 “preservation” means preserving the affordability of an assisted
17 housing development that is eligible for prepayment or termination
18 or for which within the expiration of rental restrictions is scheduled
19 to occur within five years, as those terms are defined in Section
20 65863.10 of the Government Code.

21 (b) Each agency shall expend over the duration of each
22 redevelopment implementation plan, the moneys in the Low and
23 Moderate Income Housing Fund to assist housing that is available
24 to all persons regardless of age in at least the same proportion as
25 the number of low-income households with a member under age
26 65 years bears to the total number of low-income households of
27 the community as reported in the most recent census of the United
28 States Census Bureau.

29 (c) An agency that has deposited in the Low and Moderate
30 Income Housing Fund over the first five years of the period of an
31 implementation plan an aggregate that is less than two million
32 dollars (\$2,000,000) shall have an extra five years to meet the
33 requirements of this section.

34 (d) For the purposes of this section, “locally controlled” means
35 government assistance where the community or other local
36 government entity has the discretion and the authority to determine
37 the recipient and the amount of the assistance, whether or not the
38 source of the funds or other assistance is from the state or federal
39 government. Examples of locally controlled government assistance
40 include, but are not limited to, Community Development Block

1 Grant Program (42 U.S.C. Sec. 5301 and following) funds allocated
 2 to a city or county, Home Investment Partnership Program (42
 3 U.S.C. Sec. 12721 and following) funds allocated to a city or
 4 county, fees or funds received by a city or county pursuant to a
 5 city or county authorized program, and the waiver or deferral of
 6 city or other charges.

7 SEC. 11. Section 33334.12 of the Health and Safety Code is
 8 amended to read:

9 ~~33334.12. (a) (1) Upon failure of the agency to expend or~~
 10 ~~encumber excess surplus in the Low and Moderate Income Housing~~
 11 ~~Fund within one year from the date the moneys become excess~~
 12 ~~surplus, as defined in paragraph (1) of subdivision (g), the agency~~
 13 ~~shall do either of the following:~~

14 ~~(A) Disburse voluntarily its excess surplus to the county housing~~
 15 ~~authority or to another public agency exercising housing~~
 16 ~~development powers within the territorial jurisdiction of the agency~~
 17 ~~in accordance with subdivision (b).~~

18 ~~(B) Expend or encumber its excess surplus within two additional~~
 19 ~~years.~~

20 ~~(2)~~

21 ~~33334.12. (a) If an agency, after three years has elapsed from~~
 22 ~~the date that the moneys become excess surplus, has not expended~~
 23 ~~or encumbered its excess surplus, the agency shall be subject to~~
 24 ~~sanctions pursuant to subdivision (e) (b), until the agency has~~
 25 ~~expended or encumbered its excess surplus plus an additional~~
 26 ~~amount, equal to 50 percent of the amount of the excess surplus~~
 27 ~~that remains at the end of the three-year period. The additional~~
 28 ~~expenditure shall not be from the agency's Low and Moderate~~
 29 ~~Income Housing Fund, but shall be used in a manner that meets~~
 30 ~~all requirements for expenditures from that fund.~~

31 ~~(b) The housing authority or other public agency to which the~~
 32 ~~money is transferred shall utilize the moneys for the purposes of,~~
 33 ~~and subject to the same restrictions that are applicable to, the~~
 34 ~~redevelopment agency under this part, and for that purpose may~~
 35 ~~exercise all of the powers of a housing authority under Part 2~~
 36 ~~(commencing with Section 34200) to an extent not inconsistent~~
 37 ~~with these limitations.~~

38 ~~(c) Notwithstanding Section 34209 or any other provision of~~
 39 ~~law, for the purpose of accepting a transfer of, and using, moneys~~
 40 ~~pursuant to this section, the housing authority of a county or other~~

1 ~~public agency may exercise its powers within the territorial~~
2 ~~jurisdiction of a city redevelopment agency located in that county.~~

3 ~~(d) The amount of excess surplus that shall be transferred to the~~
4 ~~housing authority or other public agency because of a failure of~~
5 ~~the redevelopment agency to expend or encumber excess surplus~~
6 ~~within one year shall be the amount of the excess surplus that is~~
7 ~~not so expended or encumbered. The housing authority or other~~
8 ~~public agency to which the moneys are transferred shall expend~~
9 ~~or encumber these moneys for authorized purposes not later than~~
10 ~~three years after the date these moneys were transferred from the~~
11 ~~Low and Moderate Income Housing Fund.~~

12 ~~(e)~~

13 ~~(b) (1) Until a time when the agency has expended or~~
14 ~~encumbered excess surplus moneys pursuant to subdivision (a),~~
15 ~~the agency shall be prohibited from encumbering any funds or~~
16 ~~expending any moneys derived from any source, except that the~~
17 ~~agency may encumber funds and expend moneys to pay the~~
18 ~~following obligations, if any, that were incurred by the agency~~
19 ~~prior to three years from the date the moneys became excess~~
20 ~~surplus:~~

21 ~~(A) Bonds, notes, interim certificates, debentures, or other~~
22 ~~obligations issued by an agency, whether funded, refunded,~~
23 ~~assumed, or otherwise, pursuant to Article 5 (commencing with~~
24 ~~Section 33640).~~

25 ~~(B) Loans or moneys advanced to the agency, including, but~~
26 ~~not limited to, loans from federal, state, or local agencies, or a~~
27 ~~private entity.~~

28 ~~(C) Contractual obligations which, if breached, could subject~~
29 ~~the agency to damages or other liabilities or remedies.~~

30 ~~(D) Obligations incurred pursuant to Section 33445.~~

31 ~~(E) Indebtedness incurred pursuant to Section 33334.2 or~~
32 ~~33334.6.~~

33 ~~(F) Obligations incurred pursuant to Section 33401.~~

34 ~~(G) An amount, to be expended for the operation and~~
35 ~~administration of the agency, that may not exceed 75 percent of~~
36 ~~the amount spent for those purposes in the preceding fiscal year.~~

37 ~~(2) This subdivision shall not be construed to prohibit the~~
38 ~~expenditure of excess surplus funds or other funds to meet the~~
39 ~~requirement in ~~paragraph (2)~~ of subdivision (a) that the agency~~
40 ~~spend or encumber excess surplus funds, plus an amount equal to~~

1 50 percent of excess surplus, prior to spending or encumbering
 2 funds for any other purpose.

3 ~~(f) Nothing in this section shall be construed to limit any~~
 4 ~~authority a redevelopment agency may have under other provisions~~
 5 ~~of this part to contract with a housing authority for increasing or~~
 6 ~~improving the community's supply of low- and moderate-income~~
 7 ~~housing.~~

8 ~~(g)~~

9 (c) For purposes of this section, *the following terms have the*
 10 *following meanings:*

11 (1) "Excess surplus" means any unexpended and unencumbered
 12 amount in an agency's Low and Moderate Income Housing Fund,
 13 *plus the amount of funds expended from the Low and Moderate*
 14 *Income Housing Fund for real property that the agency owns and*
 15 *for which the agency has not completed either of the activities*
 16 *described in subparagraphs (A) and (B) of paragraph (1) of*
 17 *subdivision (a) of Section 33334.16, that exceeds the greater of*
 18 *one million dollars (\$1,000,000) or the aggregate amount deposited*
 19 *into the Low and Moderate Income Housing Fund pursuant to*
 20 *Sections 33334.2 and 33334.6 during the agency's preceding four*
 21 *fiscal years. The first fiscal year to be included in this computation*
 22 *is the 1989–90 fiscal year, and the first date on which an excess*
 23 *surplus may exist is July 1, 1994.*

24 (2) Moneys shall be deemed encumbered if committed pursuant
 25 to a legally enforceable contract or agreement for expenditure for
 26 purposes specified in Section 33334.2 or 33334.3.

27 (3) (A) For purposes of determining whether an excess surplus
 28 exists, it is the intent of the Legislature to give credit to agencies
 29 which convey land for less than fair market value, on which low-
 30 and moderate-income housing is built or is to be built if at least
 31 49 percent of the units developed on the land are available at
 32 affordable housing cost to lower income households for at least
 33 the time specified in subdivision (e) of Section 33334.3, and
 34 otherwise comply with all of the provisions of this division
 35 applicable to expenditures of moneys from a low- and
 36 moderate-income housing fund established pursuant to Section
 37 33334.3. Therefore, for the sole purpose of determining the amount,
 38 if any, of an excess surplus, an agency may make the following
 39 calculation: if an agency sells, leases, or grants land acquired with
 40 moneys from the Low and Moderate Income Housing Fund,

1 established pursuant to Section 33334.3, for an amount which is
2 below fair market value, and if at least 49 percent of the units
3 constructed or rehabilitated on the land are affordable to lower
4 income households, as defined in Section 50079.5, the difference
5 between the fair market value of the land and the amount the
6 agency receives may be subtracted from the amount of moneys in
7 an agency's Low and Moderate Income Housing Fund.

8 (B) If taxes that are deposited in the Low and Moderate Income
9 Housing Fund are used as security for bonds or other indebtedness,
10 the proceeds of the bonds or other indebtedness, and income and
11 expenditures related to those proceeds, shall not be counted in
12 determining whether an excess surplus exists. The unspent portion
13 of the proceeds of bonds or other indebtedness, and income related
14 thereto, shall be excluded from the calculation of the unexpended
15 and unencumbered amount in the Low and Moderate Income
16 Housing Fund when determining whether an excess surplus exists.

17 (C) Nothing in this subdivision shall be construed to restrict the
18 authority of an agency provided in any other provision of this part
19 to expend funds from the Low and Moderate Income Housing
20 Fund.

21 (D) The department shall develop and periodically revise the
22 methodology to be used in the calculation of excess surplus as
23 required by this section. The director shall appoint an advisory
24 committee to advise in the development of this methodology. The
25 advisory committee shall include department staff, affordable
26 housing advocates, and representatives of the California
27 Redevelopment Association, the California Society of Certified
28 Public Accountants, the Controller, and any other authorities or
29 persons interested in the field that the director deems necessary
30 and appropriate.

31 ~~(h)~~

32 (d) Communities in which an agency has disbursed excess
33 surplus funds pursuant to this section shall not disapprove a low-
34 or moderate-income housing project funded in whole or in part by
35 the excess surplus funds if the project is consistent with applicable
36 building codes and the land use designation specified in any
37 element of the general plan as it existed on the date the application
38 was deemed complete. A local agency may require compliance
39 with local development standards and policies appropriate to and
40 consistent with meeting the quantified objectives relative to the

1 development of housing, as required in housing elements of the
2 community pursuant to subdivision (b) of Section 65583 of the
3 Government Code.

4 (i) ~~Notwithstanding subdivision (a), any agency that has funds
5 that become excess surplus on July 1, 1994, shall have, pursuant
6 to subdivision (a), until January 1, 1995, to decide to transfer the
7 funds to a housing authority or other public agency, or until January
8 1, 1997, to expend or encumber those funds, or face sanctions
9 pursuant to subdivision (e).~~

10 SEC. 12. Section 33334.16 of the Health and Safety Code is
11 amended to read:

12 33334.16. (a) (1) For each interest in real property acquired
13 using moneys from the Low and Moderate Income Housing Fund,
14 the agency shall, within five years from the date it first acquires
15 the property interest for the development of housing affordable to
16 persons and families of low and moderate income, ~~initiate activities
17 consistent with the development of the property for that purpose.
18 These activities may include, but are not limited to, zoning changes
19 or agreements entered into for the development and disposition of
20 the property. If complete either of the following activities:~~

21 (A) *Enter into a disposition and development agreement with
22 a third party for the development of housing affordable to persons
23 and families of low and moderate income.*

24 (B) *Obtain final land use entitlements and secure full financing
25 for agency development of housing affordable to persons and
26 families of low and moderate income.*

27 (2) ~~If these activities have not been initiated within this period,
28 the legislative body may, by resolution, extend the period during
29 which the agency may retain the property for one additional period
30 not to exceed five years. The resolution of extension shall affirm
31 the intention of the legislative body that the property be used for
32 the development of housing affordable to persons and families of
33 low and moderate income. In the event that physical development
34 of the property for this purpose has not begun by the end of the
35 extended period, or if the agency does not comply with this
36 requirement, the property shall be sold and the moneys from the
37 sale, less reimbursement to the agency for the cost of the sale, shall
38 be deposited in the agency's Low and Moderate Income Housing
39 Fund completed within this period or if a certificate of occupancy
40 has not been issued within 10 years from the date of acquisition,~~

1 *the agency shall reimburse the Low and Moderate Income Housing*
2 *Fund 150 percent of the amount expended to acquire the property*
3 *or the current fair market value of the property, whichever amount*
4 *is greater.*

5 *(b) At any time, if a real property acquired using moneys from*
6 *the Low and Moderate Income Housing Fund is sold or transferred*
7 *for a purpose other than housing affordable to persons and families*
8 *of low and moderate income, or if the real property is developed*
9 *such that less than 50 percent of the floor area is housing*
10 *affordable to persons and families of low and moderate income,*
11 *the agency, in addition to proceeds from the sale or transfer, shall*
12 *deposit into the Low and Moderate Income Housing Fund from*
13 *agency revenues other than those required to be deposited in the*
14 *Low and Moderate Income Housing Fund an amount equal to 50*
15 *percent of the sale price of the property or, if the property is not*
16 *sold, of the fair market value of the land at the time a building*
17 *permit is issued for the property.*

18 SEC. 13. Section 33413 of the Health and Safety Code is
19 amended to read:

20 33413. (a) Whenever dwelling units ~~housing affordable to or~~
21 *occupied by persons and families of low or moderate income are*
22 *destroyed or removed from the low- and moderate-income housing*
23 *market as part of a redevelopment project that is subject to a written*
24 *agreement with the agency or where financial assistance has been*
25 *provided by the agency, the agency shall, within four years of the*
26 *destruction or removal, rehabilitate, develop, or construct, or cause*
27 *to be rehabilitated, developed, or constructed, for rental or sale to*
28 *persons and families of low or moderate income, an equal number*
29 *of replacement dwelling units that have an equal or greater number*
30 *of bedrooms as those destroyed or removed units at affordable*
31 *housing costs within the territorial jurisdiction of the agency. When*
32 *The replacement obligation shall apply to all units affordable to*
33 *low or moderate income persons or families at the time of initiation*
34 *of negotiations of a written agreement with or financial assistance*
35 *from the agency.*

36 *(1) When dwelling units are destroyed or removed after*
37 *September 1, 1989, 75 percent of the replacement dwelling units*
38 *shall replace dwelling units available at affordable housing cost*
39 *in the same or a lower income level ~~of very low income~~*
40 *households, lower income households, and persons and families*

1 of low and moderate income, (*extremely low, very low, low, or*
 2 *moderate*) as the persons displaced from those destroyed or
 3 removed units. ~~When~~

4 (2) *When* dwelling units are destroyed or removed on or after
 5 January 1, 2002, 100 percent of the replacement dwelling units
 6 shall be available at affordable housing cost to persons in the same
 7 or a lower income category (*extremely low, very low, ~~or~~ low, or*
 8 *moderate*), as the persons displaced from those destroyed or
 9 removed units.

10 (3) *In the case where the agency is obligated to replace vacant*
 11 *units or units housing persons above moderate income, such*
 12 *replacement units shall be available at housing costs in the same*
 13 *or lower income category (extremely low, very low, low, or*
 14 *moderate) in the same proportion as the units occupied by low-*
 15 *and moderate-income households in the property.*

16 (4) *Replacement dwelling units shall be located in the same*
 17 *project area as the units demolished or removed.*

18 (5) *Up to 25 percent of the replacement obligation incurred*
 19 *during a five-year implementation plan may be satisfied with units*
 20 *that have been rehabilitated such that after-rehabilitation value*
 21 *is increased by 50 percent or more of the pre-rehabilitation value,*
 22 *as evidenced by pre and post rehabilitation appraisals and, the*
 23 *rehabilitated units were, at the time the dwelling units to be*
 24 *replaced were destroyed or removed were both of the following:*

25 (A) *Occupied by extremely low or very low income households*
 26 *at risk of demolition or closure due to substandard conditions.*

27 (B) *Vacant due to substandard conditions as defined in Section*
 28 *1941.1 of the Civil Code.*

29 (6) *For each project containing rehabilitated replacement units,*
 30 *the agency shall adopt a separate written resolution, after public*
 31 *hearing and based on substantial evidence, that the rehabilitation*
 32 *of the replacement dwelling units complies with this subdivision.*

33 (b) (1) *Prior to the time limit on the effectiveness of the*
 34 *redevelopment plan established pursuant to Sections 33333.2,*
 35 *33333.6, and 33333.10 at least 30 percent of all new and*
 36 *substantially rehabilitated dwelling units developed by an agency*
 37 *shall be available at affordable housing cost to, and occupied by,*
 38 *persons and families of low or moderate income. Not less than 50*
 39 *percent of the dwelling units required to be available at affordable*
 40 *housing cost to, and occupied by, persons and families of low or*

1 moderate income shall be available at affordable housing cost to,
2 and occupied by, very low income households.

3 (2) (A) (i) Prior to the time limit on the effectiveness of the
4 redevelopment plan established pursuant to Sections 33333.2,
5 33333.6, and 33333.10 at least 15 percent of all new and
6 substantially rehabilitated dwelling units developed within a project
7 area under the jurisdiction of an agency by public or private entities
8 or persons other than the agency shall be available at affordable
9 housing cost to, and occupied by, persons and families of low or
10 moderate income. Not less than 40 percent of the dwelling units
11 required to be available at affordable housing cost to, and occupied
12 by, persons and families of low or moderate income shall be
13 available at affordable housing cost to, and occupied by, very low
14 income households.

15 (ii) To satisfy this paragraph, in whole or in part, the agency
16 may cause, by regulation or agreement, to be available, at
17 affordable housing cost, to, and occupied by, persons and families
18 of low or moderate income or to very low income households, as
19 applicable, two units outside a project area for each unit that
20 otherwise would have been required to be available inside a project
21 area.

22 (iii) On or after January 1, 2002, as used in this paragraph and
23 in paragraph (1), “substantially rehabilitated dwelling units” means
24 all units substantially rehabilitated, with agency assistance. Prior
25 to January 1, 2002, “substantially rehabilitated dwelling units”
26 shall mean substantially rehabilitated multifamily rented dwelling
27 units with three or more units regardless of whether there is agency
28 assistance, or substantially rehabilitated, with agency assistance,
29 single-family dwelling units with one or two units.

30 (iv) As used in this paragraph and in paragraph (1), “substantial
31 rehabilitation” means rehabilitation, the value of which constitutes
32 25 percent of the after rehabilitation value of the dwelling, inclusive
33 of the land value.

34 (v) To satisfy this paragraph, the agency may aggregate new or
35 substantially rehabilitated dwelling units in one or more project
36 areas, if the agency finds, based on substantial evidence, after a
37 public hearing, that the aggregation will not cause or exacerbate
38 racial, ethnic, or economic segregation.

39 (B) To satisfy the requirements of paragraph (1) and
40 subparagraph (A), the agency may purchase, or otherwise acquire

1 or cause by regulation or agreement the purchase or other
2 acquisition of, long-term affordability covenants on multifamily
3 units that restrict the cost of renting or purchasing those units that
4 either: (i) are not presently available at affordable housing cost to
5 persons and families of low or very low income households, as
6 applicable; or (ii) are units that are presently available at affordable
7 housing cost to this same group of persons or families, but are
8 units that the agency finds, based upon substantial evidence, after
9 a public hearing, cannot reasonably be expected to remain
10 affordable to this same group of persons or families.

11 (C) To satisfy the requirements of paragraph (1) and
12 subparagraph (A), the long-term affordability covenants purchased
13 or otherwise acquired pursuant to subparagraph (B) shall be
14 required to be maintained on dwelling units at affordable housing
15 cost to, and occupied by, persons and families of low or very low
16 income, for the longest feasible time but not less than 55 years for
17 rental units and 45 years for owner-occupied units. Not more than
18 50 percent of the units made available pursuant to paragraph (1)
19 and subparagraph (A) may be assisted through the purchase or
20 acquisition of long-term affordability covenants pursuant to
21 subparagraph (B). Not less than 50 percent of the units made
22 available through the purchase or acquisition of long-term
23 affordability covenants pursuant to subparagraph (B) shall be
24 available at affordable housing cost to, and occupied by, very low
25 income households.

26 (D) To satisfy the requirements of paragraph (1) and
27 subparagraph (A), each mutual self-help housing unit, as defined
28 in subparagraph (C) of paragraph (1) of subdivision (f) of Section
29 33334.3, that is subject to a 15-year deed restriction shall count as
30 one-third of a unit.

31 (3) The requirements of this subdivision shall apply
32 independently of the requirements of subdivision (a). The
33 requirements of this subdivision shall apply, in the aggregate, to
34 housing made available pursuant to paragraphs (1) and (2),
35 respectively, and not to each individual case of rehabilitation,
36 development, or construction of dwelling units, unless an agency
37 determines otherwise.

38 (4) Each redevelopment agency, as part of the implementation
39 plan required by Section 33490, shall adopt a plan to comply with
40 the requirements of this subdivision for each project area. The plan

1 shall be consistent with, and may be included within, the
2 community's housing element. The plan shall be reviewed and, if
3 necessary, amended at least every five years in conjunction with
4 either the housing element cycle or the plan implementation cycle.
5 The plan shall ensure that the requirements of this subdivision are
6 met every 10 years. If the requirements of this subdivision are not
7 met by the end of each 10-year period, the agency shall meet these
8 goals on an annual basis until the requirements for the 10-year
9 period are met. If the agency has exceeded the requirements within
10 the 10-year period, the agency may count the units that exceed the
11 requirement in order to meet the requirements during the next
12 10-year period. The plan shall contain the contents required by
13 paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

14 (c) (1) The agency shall require that the aggregate number of
15 replacement dwelling units and other dwelling units rehabilitated,
16 developed, constructed, or price restricted pursuant to subdivision
17 (a) or (b) remain available at affordable housing cost to, and
18 occupied by, persons and families of low-income,
19 moderate-income, and very low income households, respectively,
20 for the longest feasible time, but for not less than 55 years for
21 rental units, 45 years for home ownership units, and 15 years for
22 mutual self-help housing units, as defined in subparagraph (C) of
23 paragraph (1) of subdivision (f) of Section 33334.3, except as set
24 forth in paragraph (2). Nothing in this paragraph precludes the
25 agency and the developer of the mutual self-help housing units
26 from agreeing to 45-year deed restrictions.

27 (2) Notwithstanding paragraph (1), the agency may permit sales
28 of owner-occupied units prior to the expiration of the 45-year
29 period, and mutual self-help housing units prior to the expiration
30 of the 15-year period, established by the agency for a price in
31 excess of that otherwise permitted under this subdivision pursuant
32 to an adopted program that protects the agency's investment of
33 moneys from the Low and Moderate Income Housing Fund,
34 including, but not limited to, an equity sharing program that
35 establishes a schedule of equity sharing that permits retention by
36 the seller of a portion of those excess proceeds, based on the length
37 of occupancy. The remainder of the excess proceeds of the sale
38 shall be allocated to the agency, and deposited into the Low and
39 Moderate Income Housing Fund. The agency shall, within three
40 years from the date of sale pursuant to this paragraph of each home

1 ownership or mutual self-help housing unit subject to a 45-year
2 deed restriction, and every third mutual self-help housing unit
3 subject to a 15-year deed restriction, expend funds to make
4 affordable an equal number of units at the same or lowest income
5 level as the unit or units sold pursuant to this paragraph, for a
6 period not less than the duration of the original deed restrictions.
7 Only the units originally assisted by the agency shall be counted
8 towards the agency's obligations under Section 33413.

9 (3) The requirements of this section shall be made enforceable
10 in the same manner as provided in paragraph (7) of subdivision
11 (f) of Section 33334.3.

12 (4) If land on which the dwelling units required by this section
13 are located is deleted from the project area, the agency shall
14 continue to require that those units remain affordable as specified
15 in this subdivision.

16 (5) For each unit counted towards the requirements of
17 subdivisions (a) and (b), the agency shall require the recording in
18 the office of the county recorder of covenants or restrictions that
19 ensure compliance with this subdivision. With respect to covenants
20 or restrictions that are recorded on or after January 1, 2008, the
21 agency shall comply with the requirements of paragraphs (3) and
22 (4) of subdivision (f) of Section 33334.3.

23 (d) (1) This section applies only to redevelopment projects for
24 which a final redevelopment plan is adopted pursuant to Article 5
25 (commencing with Section 33360) on or after January 1, 1976,
26 and to areas that are added to a project area by amendment to a
27 final redevelopment plan adopted on or after January 1, 1976. In
28 addition, subdivision (a) shall apply to any other redevelopment
29 project with respect to dwelling units destroyed or removed from
30 the low- and moderate-income housing market on or after January
31 1, 1996, irrespective of the date of adoption of a final
32 redevelopment plan or an amendment to a final redevelopment
33 plan adding areas to a project area. Additionally, any agency may,
34 by resolution, elect to make all or part of the requirements of this
35 section applicable to any redevelopment project of the agency for
36 which the final redevelopment plan was adopted prior to January
37 1, 1976. In addition, subdivision (b) shall apply to redevelopment
38 plans adopted prior to January 1, 1976, for which an amendment
39 is adopted pursuant to Section 33333.10, except that subdivision
40 (b) shall apply to those redevelopment plans prospectively only

1 so that the requirements of subdivision (b) shall apply only to new
2 and substantially rehabilitated dwelling units for which the building
3 permits are issued on or after the date that the ordinance adopting
4 the amendment pursuant to Section 33333.10 becomes effective.

5 (2) An agency may, by resolution, elect to require that whenever
6 dwelling units housing persons or families of low or moderate
7 income are destroyed or removed from the low- and
8 moderate-income housing market as part of a redevelopment
9 project, the agency shall replace each dwelling unit with up to
10 three replacement dwelling units pursuant to subdivision (a).

11 (e) Except as otherwise authorized by law, this section does not
12 authorize an agency to operate a rental housing development
13 beyond the period reasonably necessary to sell or lease the housing
14 development.

15 (f) Notwithstanding subdivision (a), the agency may replace
16 destroyed or removed dwelling units with a fewer number of
17 replacement dwelling units if the replacement dwelling units meet
18 both of the following criteria:

19 (1) The total number of bedrooms in the replacement dwelling
20 units equals or exceeds the number of bedrooms in the destroyed
21 or removed units. Destroyed or removed units having one or no
22 bedroom are deemed for this purpose to have one bedroom.

23 (2) The replacement units are affordable to and occupied by the
24 same income level of households as the destroyed or removed
25 units.

26 (g) “Longest feasible time,” as used in this section, includes,
27 but is not limited to, unlimited duration.

28 (h) *If a court finds that an agency has failed to comply with the*
29 *requirements of this section, the court, at a minimum, shall issue*
30 *an order that prohibits the agency from issuing any debt for any*
31 *project area, except debt from which all the proceeds will be*
32 *deposited into the Low and Moderate Income Housing Fund or*
33 *otherwise used to comply with the requirements of this section,*
34 *until such time as the court finds that the agency has fully complied*
35 *with the requirements of this section.*

36 SEC. 14. Section 33413.5 of the Health and Safety Code is
37 amended to read:

38 33413.5. Not less than 30 days prior to the execution of an
39 agreement for acquisition of real property, or the execution of an
40 agreement for the disposition and development of property, ~~or the~~

1 execution of an owner participation agreement, which agreement
2 would lead to the destruction or removal of dwelling units from
3 the low- and moderate-income housing market, the agency shall
4 adopt by resolution a replacement housing plan. For a reasonable
5 time prior to adopting a replacement housing plan by resolution,
6 the agency shall make available a draft of the proposed replacement
7 housing plan for review and comment by the project area
8 committee, other public agencies, and the general public.

9 The replacement housing plan shall include (1) the general
10 location of housing to be rehabilitated, developed, or constructed
11 pursuant to Section 33413, (2) *a description of the occupancy and*
12 *affordability restrictions to be imposed on the replacement dwelling*
13 *units, (3) substantial evidence supporting a finding that the*
14 *replacement dwelling units will meet the needs of the households*
15 *displaced from the dwelling units that the replacement units are*
16 *intended to replace, (4) a declaration of whether the agency intends*
17 *to rehabilitate existing dwelling units pursuant to paragraph (5)*
18 *of subdivision (a) of Section 33413, (5) a description of the*
19 *occupancy and affordability restrictions to be imposed on the*
20 *replacement dwelling units, (6) substantial evidence supporting a*
21 *finding that the replacement dwelling units will meet the needs of*
22 *the households displaced from the dwelling units that the*
23 *replacement units are intended to replace, (7) a declaration*
24 *whether the agency intends to rehabilitate existing dwelling units*
25 *pursuant to paragraph (5) of subdivision (a) of Section 33413, (8)*
26 *an adequate means of financing such rehabilitation, development,*
27 *or construction,*~~(3)~~ (9) a finding that the replacement housing does
28 not require the approval of the voters pursuant to Article XXXIV
29 of the California Constitution, or that such approval has been
30 obtained,~~(4)~~ (10) the number of dwelling units housing persons
31 and families of low or moderate income planned for construction
32 or rehabilitation, and~~(5)~~ (11) the timetable for meeting the plan's
33 relocation, rehabilitation, and replacement housing objectives. A
34 dwelling unit whose replacement is required by Section 33413 but
35 for which no replacement housing plan has been prepared, shall
36 not be destroyed or removed from the low- and moderate-income
37 housing market until the agency has by resolution adopted a
38 replacement housing plan.

39 Nothing in this section shall prevent an agency from destroying
40 or removing from the low- and moderate-income housing market

1 a dwelling unit which the agency owns and which is an immediate
2 danger to health and safety. The agency shall, as soon as
3 practicable, adopt by resolution a replacement housing plan with
4 respect to such dwelling unit.

5 SEC. 15. Article 13 (commencing with Section 33460) is added
6 to Chapter 4 of Part 1 of Division 24 of the Health and Safety
7 Code, to read:

8

9

Article 13. Accountability Audits

10

11 33460. (a) The Legislature hereby finds and declares both of
12 the following:

13 (1) Past department audits of redevelopment agencies have
14 uncovered errors, omissions, and violations that have resulted in
15 significant repayments to agencies' Low and Moderate Income
16 Housing Fund, thereby providing additional resources for
17 increasing, improving, and preserving the supply of low- and
18 moderate- income housing available at affordable housing cost.

19 (2) Providing funding for future department audits of
20 redevelopment agencies will ensure that tax increment, interest,
21 and debt proceeds are appropriately deposited into the Low and
22 Moderate Income Housing Fund and that agencies make only legal
23 expenditures from the fund, thereby providing additional resources
24 for increasing, improving, and preserving the supply of low- and
25 moderate-income housing available at affordable housing cost. As
26 a result, the deposits required by this section are permissible
27 pursuant to clause (ii) of subparagraph (B) of paragraph (7) of
28 subdivision (a) of Section 25.5 of Article XIII of the California
29 Constitution.

30 (b) Immediately upon receipt, each agency shall annually deposit
31 one-half of one-tenth percent of any tax increment deposited into
32 the Low and Moderate Income Housing Fund into the
33 Redevelopment Agency Accountability Fund created pursuant to
34 Section 50464.5 to be used solely for the purpose described in
35 subdivision (b) of that section.

36 SEC. 16. Section 50464.5 is added to the Health and Safety
37 Code, to read:

38 50464.5. (a) The Redevelopment Agency Accountability Fund
39 is hereby created in the State Treasury and is available, upon
40 appropriation, to the department for the purposes of subdivision

1 (b). Notwithstanding Section 16305.7 of the Government Code,
2 any moneys received by the department pursuant to Section 33460,
3 and any other sources, repayments, interest, or new appropriations,
4 shall be deposited in the fund. Moneys in the fund shall not be
5 subject to transfer to any other fund pursuant to any provision of
6 Part 2 (commencing with Section 16300) of Division 4 of Title 2
7 of the Government Code, except the Surplus Money Investment
8 Fund. The department may require the transfer of moneys in the
9 fund to the Surplus Money Investment Fund for investment
10 pursuant to Article 4 (commencing with Section 16470) of Chapter
11 3 of Part 2 of Division 4 of Title 2 of the Government Code.
12 Notwithstanding Section 16305.7 of the Government Code, all
13 interest, dividends, and pecuniary gains from the investments shall
14 accrue to the fund.

15 (b) With funds made available pursuant to subdivision (a), the
16 department shall conduct audits of redevelopment agencies to
17 ensure compliance with the housing provisions of the Community
18 Redevelopment Law. The department shall include in the audits
19 a review of agency compliance with production and replacement
20 housing obligations, recording and monitoring of affordability
21 covenants, provision of relocation assistance, propriety of deposits
22 to and expenditures from the Low and Moderate Income Housing
23 Fund, compliance with the debt limit of the agency, adoption of a
24 legally sufficient implementation plan, each of the major audit
25 violations pursuant to subdivision (j) of Section 33080.8, and any
26 other accounting practice or provision of the Community
27 Redevelopment Law in the discretion of the department. The
28 department shall require that each agency take action to correct
29 the audit violations. If the department determines that an agency
30 has not corrected the audit violations within 180 days of a final
31 audit report, it shall forward all relevant documents to the Attorney
32 General for action pursuant to Section 33080.9. The department
33 shall make available on its Internet Web site the final audit reports,
34 a statement of any resolution of audit reports, or if not resolved,
35 the date audit reports were forwarded to the Attorney General.

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